

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:) Case No. 14-10918
)
DAWN L. YAGER,) Chapter 7
)
Debtor.) Judge: JESSICA E. PRICE SMITH
)
RICHARD A. BAUMGART,)
Trustee in Bankruptcy) Adversary No.
1801 East Ninth Street, Suite 1100)
Cleveland, OH 44114)
)
Plaintiff)
)
vs.)
)
DAWN L. YAGER)
4482 Center Rd.)
Brunswick, OH 44212)
)
and)
)
KEVIN YAGER)
5111 Columbia Road)
Medina, OH 44256)
)
and)
)
JOHN A. BURKE)
Medina County Treasurer)
Medina County Administration Building)
144 North Broadway)
Medina, OH 44256)
)
and)
)
)
)
)

)
)
COLONIAL SAVINGS, F.A.)
ATTN: Manager or Executive Officer)
2626c West Freeway)
Fort Worth, TX 76102)
)
Defendants.)

COMPLAINT TO DETERMINE VALIDITY, PRIORITY AND AMOUNT OF LIENS,
CLAIMS, OWNERSHIP AND FOR APPROVAL OF SALE OF CO-OWNER'S
INTEREST PURSUANT TO 11 U.S.C. SECTION 363(h) AND RULES OF
BANKRUPTCY PROCEDURE 7001(3)

Richard A. Baumgart, the Plaintiff herein, by and through counsel respectfully represents to the Court as follows:

1. Jurisdiction of the within proceedings is vested in this Court by virtue of the provisions of 28 U.S.C. §157 as amended and effective July 10, 1984 as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Local General Order 2012-7 entered April 4, 2012 by the United States District Court for the Northern District of Ohio, and 28 U.S.C. §1334 as amended, in that the matters hereinafter alleged as the complaint of Plaintiff are core proceedings within the core matter jurisdiction of this Court relating, among other things, to the sale of property in the estate and determination and priority of claims in reference to proceeds thereof and for authority to sell a co-owner's interest pursuant to 11 U.S.C. §363(h) and Rule 7001(3) of the Federal Rules of Bankruptcy Procedure, and with respect to which the Plaintiff consents to the entry of all final orders by the Bankruptcy Court and the Judge thereof.

2. Dawn L. Yager, the Debtor herein (the "Debtor") filed a petition in the United States Bankruptcy Court for the Northern District of Ohio seeking relief under Chapter 7 of Title 11 of the United States Code in which case an order for relief was entered on February 19, 2014.

3. The Plaintiff, Richard A. Baumgart, is the duly appointed, acting and qualified Trustee in Bankruptcy for the Debtor.

COUNT I

4. Plaintiff incorporates herein by reference all of the averments contained in paragraphs 1 through 3 above as though fully rewritten herein.

5. Pursuant to 11 U.S.C. § 541, the Debtor's undivided one-half interest in the real estate located at 8300 Coon Club Road, Medina, OH 44256, constitutes property of the Debtor's bankruptcy estate. The real estate located at 8300 Coon Club Road, Medina, OH 44256 (the "Real Property") is more fully described as follows:

SITUATED IN THE STATE OF OHIO, THE COUNTY OF MEDINA AND THE TOWNSHIP OF CHATHAM: BEING A PART OF A PARCEL OF LAND CONVEYED TO HELEN VOZAR BY DEED RECORDED IN VOLUME 344, PAGE 204 OF THE MEDINA COUNTY RECORD OF DEEDS AND KNOWN AS BEING A PART OF CHATHAM TOWNSHIP LOT NUMBER 8, TRACT NUMBER 3 AND BEING MORE FULLY DESCRIBED AS FOLLOWS: BEGINNING FOR REFERENCE AT AN IRON PIN FOUND, SAID PIN REFERENCED BY AN IRON PIN SET SOUTH 00° 01' 37" EAST A DISTANCE OF 30.00 FEET, SAID PIN BEING THE NORTHEAST CORNER OF TRACT 3, LOT 8 IN CHATHAM TOWNSHIP: THENCE NORTH 89° 46' 32" WEST ALONG THE NORTH LINE OF SAID LOT AND IN AND ALONG COON CLUB ROAD (C.H. 67) A DISTANCE OF 867.59 FEET TO A POINT, SAID POINT REFERENCED BY AN IRON PIN SET SOUTH 00° 00' 02" WEST A DISTANCE OF 30.00 FEET, SAID POINT ALSO BEING THE TRUE PLACE OF BEGINNING FOR THE TRACT OF LAND HEREIN TO BE DESCRIBED; THENCE SOUTH 00° 00' 02" WEST A DISTANCE OF 1089.01 FEET TO AN IRON PIN SET; THENCE NORTH 89° 46' 32" WEST A DISTANCE OF 200.00 FEET TO AN IRON PIN SET; THENCE NORTH 00° 00' 02" EAST ALONG THE EAST LINE OF LANDS OWNED BY JUNE S. AND CHARLES LONS JR. 4/9/85 VOLUME 1006, PAGE 323 A DISTANCE OF 1089.01 FEET TO A POINT, SAID POINT REFERENCED BY AN IRON PIN SET SOUTH 00° 00' 02" WEST A DISTANCE OF 30.00 FEET; THENCE SOUTH 89° 46' 32" EAST ALONG THE NORTHLINE OF LOT 8 AND IN AND ALONG SAID ROAD A DISTANCE OF 200.00 FEET TO THE TRUE PLACE OF BEGINNING. THE TRACT OF LAND

AS SURVEYED CONTAINS 5.0000 ACRES OF LAND SUBJECT TO ALL EASEMENTS OF RECORD. THE ABOVE DESCRIPTION WAS PREPARED BY RICHARD K. HUDNUT REGISTERED SURVEYOR NO. 5956 FROM NOTES OF A FIELD SURVEY PERFORMED IN SEPTEMBER 1995. ALL BEARINGS ARE FOR DETERMINATION OF ANGLES ONLY.

PRIOR INSTRUMENT REF: VOL. 1231, PAGE 708 OF THE DEED RECORDS OF MEDINA COUNTY, OHIO.

PARCEL ID #004-09D-14-022

6. The Defendant, Kevin Yager, is the estranged spouse of the Debtor, and is the owner of an undivided one-half interest in the Real Property;

7. Partition in kind of such Real Property among the estate and such co-owner is impracticable;

8. Sale of the estate's undivided interest in such Real Property would realize significantly less for the estate than the sale of such Real Property, free of the interests of such co-owner;

9. The benefit to the estate of a sale of such Real Property, free of the interests of co-owner outweighs the detriment, if any, to such co-owner; and

10. Such Real Property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

11. The Plaintiff is entitled to an order authorizing him to sell both the bankruptcy estate's interest in the Real Property, and the interests of the Defendant, Kevin Yager, as co-owner thereof, pursuant to 11 U.S.C. § 363(b) and (h).

COUNT II

12. Plaintiff incorporates herein by reference all of the averments contained in paragraphs

1 through 11 above as though fully rewritten herein.

13. All of the Defendants named in the caption hereof may have or proclaim to have a lien, claim or other interest in and to the aforescribed Real Property or the proceeds of any sale thereof.

14. It is necessary to determine the rights and claims, if any, of all of the Defendants with respect to the Real Property described above in order to fully and properly administer the Debtor's case under Title 11 of the Bankruptcy Code.

15. Each of the Defendants should be required to assert whatever interests he or she has, or may profess to have, in and to the Real Property described above, or the proceeds thereof, by timely answering this complaint, or be forever barred from asserting any lien, claim or other interest in and to such Real Property or the proceeds thereof.

WHEREFORE, Plaintiff, Richard A. Baumgart, Trustee, prays for judgment in his favor, as follows:

A. On Count I, authorizing the Plaintiff to sell both the bankruptcy estate's interest in the Real Property, and the interest of the Defendant, Kevin Yager, as co-owner thereof, pursuant to 11 U.S.C. § 363(b) and (h); and

B. on Count II, that the Defendants named in the caption of this complaint, timely and by written Answer to the Complaint, assert whatever liens, claims or other interests he or she may have, or profess to have, in and to the Real Property described in the Complaint or the proceeds thereof. Further, that at the time of trial, in the event that any of the Defendants file a timely Answer, this Court determines the validity, priority and amount of any such liens, claims or other interests of such Defendants and his/her entitlement, if any, to the proceeds of any sale thereof; and

C. for such other and further relief as may be just and equitable in the premises.

/s/ Patrick A. Hruby
Patrick A. Hruby (#0085107)
DETTELBACH, SICHERMAN & BAUMGART
1801 East Ninth Street, Suite 1100
Cleveland, OH 44114-3169
Phone: (216) 696-6000
Fax: (216) 696-3338
Email: phruby@dsb-law.com

Attorneys for Plaintiff

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